(1)

Supreme Court, U.S
FILED

No. 001828 JUN - 7 2001

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

PAUL MASON,

Petitioner

v.

TOMMY G. THOMPSON, Secretary of Health and Human Services; BERNARD A. SCHWETZ, D.V.M., PhD, Acting Principal Deputy Commissioner of the U. S. Food and Drug Administration,

Appellees

On Petition For Writ Of Certiorari
To The United States Court of Appeals For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

PAUL MASON, PRO SE
P. O. BOX 1417
PATTERSON, CA 95363
TEL. (408) 897-3023

32 pp

THE QUESTION PRESENTED

The FDA assisted by DOJ blundered at FDA's inception in 1930, destroying the American mineral water industry without any scientific justification, resulting in about 10 million deaths 1930-2001 from heart disease; FDA and DOJ have refused to admit or correct their mistake, despite numerous scientific studies from the NAS and other scientific authorities. The District Court noted that the deaths "may exceed the Holocaust."

Did the Food and Drug Administration, U. S. Department of Health and Human Services, District Court, Appeals Court, and the U.S. Department of Justice violate the Bill of Rights' Fifth Amendment guarantee against "deprivation of life without due process of law" by perpetuating as many as 150,000 deaths per annum (about 10 million deaths since 1930) in an archetypical bureaucratic coverup?

TABLE OF CONTENTS

	Page
The Question Presented	i
Table of Authority	iii
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	2
Compelling Reasons	3
Conclusion	4
Index to Appendices	5
Appendices	8

TABLE OF AUTHORITY
CONSTITUTIONAL PROVISION

Bill of Rights, Amendment V of the Constitution

OPINIONS BELOW

The Unpublished opinion of the United States Court of Appeals appears at Appendix A. The Unpublished opinion of the United States District Court appears at Appendix B.

JURISDICTION

The date the United States Court of Appeals decided petitioner's case was March 22, 2001. No petition for rehearing was filed in petitioner's case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Bill of Rights, Amendment V to the Constitution, pp. 1, 2, 3, 4

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life**, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Alone among the nations of the world, the U. S. Government's Food and Drug Administration and the Department of Justice destroyed the American mineral water industry in 1930 (Appendices C, D, E), so that American bottled waters now average about 10% as much magnesium content as do bottled waters in the rest of the world (Appendices F, G). This suppression of the American mineral water industry at the very inception of the FDA was made without any scientific studies, in response to naive notions of "purity" in that benighted era. The resulting national deficiency in dietary Mg has caused vast deaths—possibly as many as 10,650,000 deaths since 1930, projecting the figures from the 1977 report of the Safe Drinking Water Committee of the U. S. National Academy of Sciences (Appendix H), which cited over 50 studies from nine countries. Many other studies confirmed that Mg-deficiency is correlated with heart disease, or causes heart disease, and that Americans are Mg-deficient. (Appendices I, J, K, L). After causing vast numbers of deaths from heart disease on a genocidal scale, the FDA and DOJ, in an archetypical bureaucratic coverup, have sought to deny and ignore the deaths, and have taken refuge behind the Administrative Procedures Act, arguing that FDA is better equipped than the courts to evaluate FDA's own blunder. (Appendix M—DOJ's argument).

Petitioner has standing as a remaining remnant of the once mighty U. S. mineral water industry that existed in 1900, which was destroyed by FDA and DOJ in 1930. Petitioner also has standing because defendants caused the deaths of more than 2% of petitioner's friends, relatives, neighbors, co-workers, and fellow Americans by depriving them of the natural Mg found in hard water – a historic source of human nutrition.

The District Court ruled that although the Mg-deficient-water deaths "may over time exceed the Holocaust", these deaths are a "political" problem, not a judicial problem; thus summary judgment and Dismissal. The Appeals Court affirmed. The District Court further admonished petitioner to institute a program of "public education" instead of litigation; petitioner affirms that he has exhausted both himself and his finances trying to counter 70 years of propaganda by FDA against mineral water. Nor has any politician publicly spoken about the Mg-deficiency deaths, despite numerous requests by petitioner. Thus the District Court's admonition is not practical.

COMPELLING REASONS

This case is similar to the Dredd Scott case, in that it involves a Crime Against Humanity perpetuated by the government. Whereas the Dredd Scott case led to Civil War costing about 500,000 lives, the present case has already involved as many as 10 million deaths. If the court chooses not to address the Mg-in-water issue, the deaths will continue at a rate about equal to the

Viet Nam War's 60,000 deaths every 145 days. If all legal recourses become exhausted, the only remaining *timely* way to save millions of American lives may be the John Brown approach. While Petitioner is not willing to make the same sacrifices that John Brown made, it is more than obvious that there are many individuals willing to lay down their lives to save millions of Americans; police, firefighters, and soldiers sacrifice their lives every day to save Americans.

The FDA, Dept. of Health, and the Dept. of Justice are all part of the Executive Branch of government that originated and perpetuated this Crime Against Humanity. It is the Constitutional province of the Judicial Branch, and this Court in particular, to act as a Check and Balance on the Executive Branch, to stop this unconstitutional "deprivation of life without due process of law."

CONCLUSION

This Petition for a Writ of Certiorari should be GRANTED.

DATED: June 5, 2001
Respectfully submitted,

Paul Mason, Petitioner pro se

INDEX TO APPENDICES

Appendix A — Opinion of the United States Court of Appeals, p. 8

Appendix B — Opinion of the United States District Court, p. 10

Appendix C — Excerpt from a written communica tion received by Petitioner from the FDA's staff Historian, John Swann, received May 2, 1997, which describes the documentation that the FDA "crushed" the mineral water industry, p. 19.

Appendix D — Excerpts of written communications received by Petitioner from Dr. John Zwicky, Archivist of the American Medical Association's Historical Health Fraud Collection, May, 1997, concerning the government's destruction of the mineral water industry, p. 21.

Appendix E — Excerpts from 48F2d.378, as example of how FDA/DOJ destroyed the mineral water industry in 1930. UNITED STATES v. NINETY-FOUR DOZEN, MORE OR LESS, HALF-GALLON BOTTLES CAPON SPRINGS WATER, p. 22.

Appendix F — Magnesium Content of Representative Bottled Waters Around the World (Appellate Excerpts of Record, p. 50), p. 23.

Appendix G — A Swiss database of 880 water brands from around the world, p. 23.

Appendix H — Excerpts from the Report of the Safe Drinking Water Committee of the U.S. National Academy of Sciences, 1977 pp. 440-447 (Appellate Excerpts of Record, pp. 56-60), p. 24.

Appendix I — Dietary Reference Intakes, National Institute of Medicine of the U.S. National Academy of Sciences, 1997 (Appellate Excerpts of Record, pp. 80-125), p. 24.

Appendix J — Conclusion from Atherosclerosis Risk in Communities Study, Division of Epidemiology, School of Public Health, University of Minn., and Johns Hopkins Medical Institutions, p. 26.

Appendix K — Excerpt of letter from former Surgeon General C. Everett Koop to petitioner. (Administrative Record, p. 3155), p. 27.

Appendix L — Conclusion from medical article, Variation in the Mineral Content of Commercially Available Bottled

Waters: Implications for Health and Disease. (Administrative Record, p. 3406), p. 27.

Appendix M DOJ's argument that FDA is better equipped than the court to evaluate FDA's own blunder, p. 27.

APPENDICES

Appendix A Opinion of the United States Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL W. MASON,
Appellant,
v.
TOMMY G. THOMPSON,[1] Secretary of Health and Human Services; BERNARD A. SCHWETZ, D.V.M., Ph.D.,[2] Acting Principal Deputy Commissioner of the U.S. Food and Drug Administration,
Appellees.

No. 99-16746
D.C. No. CV-97-20686-JF/PVT

MEMORANDUM[3]

---

1 We sua sponte substitute Tommy G. Thompson for Donna Shalala. See Fed. R. App. P. 43(c)(2).

2 We sua sponte substitute Bernard A. Schwetz for Jane E. Henney. See Fed. R. App. P. 43(c)(2).

3 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir.R. 36-3.

Appeal from the United States District Court
for the Northern District of California
Jeremy Fogel, District Judge, Presiding

Submitted March 12, 2001 [4]

Before: WALLACE, SILVERMAN, and W. FLETCHER, Circuit Judges.

Paul W. Mason appeals pro se the district court's judgment for defendants in his action alleging that the Food and Drug Administration's ("FDA") failure to combat dietary magnesium deficiency results in up to 150,000 deaths per year and minimal sales of Mason's magnesium-rich spring water. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo both summary judgment and dismissal for failure to state a claim, see Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1993) (per curiam), and we affirm.

The district court properly granted summary judgment to defendants on Mason's fifth claim for relief because the FDA reasonably interpreted "amount customarily consumed" to mean amount "consumed per eating occasion." See Dioxin/Organochlorine Center v. Clarke, 57 F.3d 1517, 1525 (9th Cir. 1995).

---

4 Because the panel unanimously finds this case suitable for decision without oral argument, we deny Mason's request for oral argument. See Fed. R. App. P. 34(a)(2).

The district court properly dismissed Mason's remaining claims for relief because FDA decisions not to take enforcement action are not subject to judicial review. See Hackler v. Chaney, 470 U.S. 821, 831-32 (1985).

The record contains no evidence of bias on the part of the district court judge. See 28 U.S.C. §§ 144, 455; United States v. Gordon, 974 F. 2d 1110, 1114 (9th Cir. 1992).

Mason's remaining contentions lack merit.

AFFIRMED.

/s/(unsigned)

Appendix B Opinion of the United States District Court

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Paul W. Mason,
Plaintiff,
vs.

Donna Shalala, et al.,
Defendants

| Case No.: No. C-97-20686
|
| ORDER[1] GRANTING MOTION TO
| DISMISS AND PARTIAL SUMMARY
| JUDGMENT
|

Before the Court is defendants' motion to dismiss or, in the alternative, for summary judgment, and a number of motions filed by plaintiff in relation thereto. For the following reasons, defendants, motion will be granted and plaintiff's motions will be denied.

I. DISCUSSION

Legal Standards

"A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spaulding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232 (1984); see also Argabright v. United States, 35 F.3d 472, 474 (9th Cir. 1994). For purposes of a motion to dismiss[2], the plaintiff's allegations are taken as true, and the Court must construe the complaint in

---

1 This disposition is not appropriate for publication and may not be cited.

2 Technically, the Court is to treat defendants, motion as one for judgment on the pleadings, since they previously filed an answer. see Aldabe v. Aldabe, 616 F. 2d 1089, 1093 (9th Cir. 1980). The standards are the same.

the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct. 1843, 1848 (1969); Argabright at 474. The pleading of a pro se litigant is hold to a less stringent standard than a pleading drafted by an attorney, and is to be afforded the benefit of any doubt. See Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596 (1972); Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621, 623 (9th Cir. 1988). Further, a pro se litigant must be given leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment. See Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir.1995).

The allegations

With the above standards in mind, the central factual allegation of the complaint can be summarized as follows:

1. There is persuasive scientific evidence that a significant portion of the American population does not consume adequate amounts of magnesium on a daily basis.

2. There is persuasive scientific evidence that magnesium deficiencies contribute to cardiovascular disease.

3. There is persuasive scientific evidence that up to 150,000 deaths per year would not occur but for dietary magnesium deficiencies.

4. Historically, typical water sources contained relatively high quantities of magnesium; many sources of water now, including most bottled water, have been "purified" and, as a result, contain significantly less magnesium.[3]

5. Plaintiff owns a natural mineral spring and sells magnesium-rich spring water in bulk to the beverage industry. Plaintiff's sales have been "minimal" and plaintiff has experienced an operating loss.

Taking plaintiff's allegations as true, as the Court must and has in connection with this motion, there is an annual avoidable loss of human life in numbers which, over time, would exceed the loss of life incurred in the Holocaust. Nevertheless, plaintiff's characterization of this situation as similar to the Holocaust or as "genocide" is inappropriate and not supported by the facts alleged. There is nothing in the allegations, even when liberally construed, which suggests that anyone, much less defendants, has engaged in a deliberate attempt to injure or kill. To the contrary, the allegations of the complaint suggest that many, if not all, of the factors which have led to reduced magnesium levels relate to decisions made by people who most likely had no knowledge of any possible adverse impacts on health.

Plaintiff's allegations, if proved, call out for a public

---

3 Plaintiff also suggests that bread and other food items historically contained higher magnesium levels than is common today. Plaintiff does not appear to seek any relief directly relating to anything other than water.

awareness campaign, and designed to increase the possibly legislative action, magnesium intake in the average American diet. Even if Americans are dying as the direct result of magnesium deficiencies, though, there is virtually nothing in the allegations of the complaint which, if proved, would support a finding that defendants caused any such deficiencies. To the contrary, the complaint, read as a whole, suggests that a variety of factors led to decreased magnesium levels in water and other sources and that at most defendants acquiesced in that progression.

The complaint does contain a conclusory allegation that defendants acted in concert with other federal agencies, state health authorities, and the American Medical Association to "destroy" the American mineral water industry between 1930 and 1990. Even assuming that to be true, however, there is nothing in the complaint, or in plaintiff's briefing, which suggests that any attempts to "destroy" the mineral water industry were motivated by a desire to injure Americans' health, or that defendants or others even had any knowledge until recent years that reduced magnesium levels in water might correlate to a greater incidence of cardiovascular disease.

In short, even assuming many American are dying needlessly, no one is or has been killing them deliberately. That renders plaintiff's characterization of the circumstances as being "genocide" or another Holocaust 1) incorrect, and 2) disrespectful to those who died or suffered during the Holocaust or other historical instances of genocide.

Viability of the claims

The complaint asserts nine numbered "claims for relief." The second and ninth request a jury trial and an award of attorneys' fees, respectively. As such, they are dependent on whether any of the other claims are cognizable.

The first, third, fourth, sixth, seventh, and eighth claims each seek declaratory relief. While each of the claims articulates a slightly different request or basis for relief, in essence they all request a determination either that defendants wrongfully have failed in the past to prevent magnesium deficiencies or a determination that defendants must in the future undertake measures to correct the alleged problem.

All of these claims would require the Court to review defendants' decisions not to take enforcement actions to protect public health. With certain exceptions not relevant here, however, such decisions are not subject to judicial review. See Heckler v. Chaney, 470 U.S. 821, 831-32 (1985) ("The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.") In short, it is for the agencies to decide if, when, and how the alleged health threat posed by magnesium deficiencies is to be addressed, if ever.[4] Alternatively, Congress has the

4 It appears defendants intend to continue studying the matter; they have not refused to consider the issue at all nor have they reached a final determination that nothing need be done.

power to give the agencies specific direction to address particular issues. In either case, however, these are matters of public policy which must be resolved in the executive or legislative branches of government, not the judicial branch.[5] Accordingly, the Court concludes all of these claims must be dismissed,[6] Plaintiff's fifth claim for relief presents a different question. Plaintiff challenges FDA regulations which specify that the "reference amount customarily consumed, of water is 8 ounces thereby allegedly creating a misleadingly low impression of the percentage of the recommended daily allowance of magnesium which plaintiff's water can supply, and also thereby precluding bottlers of plaintiff's water from labeling it as a "good" source of magnesium. See 21 C.F.R. § § 101.12, 101.13, 101.54. Plaintiff's theory is that persons ordinarily consume 64 ounces of water per day (eight glasses of eight ounces each). Thus, plaintiff would like his bottlers to be able to label his water to show the percentage of the daily recommended allowance of magnesium a person would receive by drinking a day's supply of the water.

The Court concludes as a matter of law that the FDA acted reasonably in defining the "reference amount customarily consumed" as being the amount consumed "per eating [or drinking] occasion," and that no reasonable trier of fact could conclude otherwise.

---

5 The Court does not suggest that issues of public policy are irrelevant to judicial decision making.

6 The Court does not reach defendants, arguments that plaintiff lacks standing or that plaintiff failed to exhaust administrative remedies.

Were plaintiff's approach adopted, the potential confusion to the consumer could be much greater. Suppose, for instance, a bottler sold plaintiff's water in an eight ounce bottle. If the label reflected the percentage of the daily recommended allowance of magnesium provided by 64 ounces of the water, how would the consumer know that he or she needed to drink seven more bottles of plaintiff's water that day (rather than switching to another brand) to achieve that percentage?

Finally, the Court notes that the FDA regulations call for the serving size to appear on the label. See 21 C.F.R. § 101.9. Thus, labels which reflect the percentage contribution to recommended daily allowances of various nutrients on a per-serving basis simply are not misleading, plaintiff's protestations to the contrary notwithstanding, Consumers know how many servings they are consuming per day. Accordingly, the Court concludes defendants are entitled to summary judgment in their favor on the fifth claim for relief.

Plaintiff's motions

In addition to filing an opposition to defendants, motion, plaintiff filed a motion to strike defendants' motion on grounds it allegedly violated Rule 11. As set forth above, defendants motion was meritorious. Therefore it did not violate Rule 11.

Plaintiff also filed a motion for judgment on the pleadings in his favor. In view of the preceding, plaintiff's motion must be denied. The Court notes that

even if defendants were not entitled to dismissal for the reasons stated above, plaintiff would be entitled at most to have the case go forward; he would not be entitled to judgment on the pleadings.

Finally, plaintiff moved to resubmit certain evidentiary materials originally attached to the complaint. No such motion was necessary; plaintiff was entitled to submit such evidence as he believed appropriate in response to defendants, motion for summary judgment. As the foregoing analysis reflects, however, none of the evidence would have affected the Court's analysis. The Court has accepted as true all of plaintiff's allegations.

Accordingly, plaintiff's motions are denied.

Conclusion

Plaintiff's complaint must be dismissed in its entirety. Furthermore, given the nature of the relief plaintiff is seeking and given the basis of the Court's ruling, it is absolutely clear that plaintiff could not amend the complaint to state a claim.

The Court does not doubt the seriousness of the issues raised by plaintiff. Nor does the Court question plaintiff's motives in pursuing this cause. Plaintiff acts from a genuine concern that many people are dying before their time, from a preventable cause. Plaintiff's recourse, though, is political, not judicial. Plaintiff must determine how best to persuade the political leaders, or the public directly, that magnesium deficiencies

represent a serious problem with a relatively simple solution.

The Court notes that plaintiff's most effective argument is that solid scientific evidence presently exists supporting his claims regarding the health effects of magnesium deficiencies. The Court respectfully suggests that in his efforts to educate the politicians and the public, plaintiff might consider emphasizing the strength of that evidence without the rhetoric of "genocide. The numbers of deaths plaintiff alleges are caused by magnesium deficiency are horrifying enough, if supported by the evidence.

III. ORDER

Defendants' motion is granted. Summary judgment in defendants' favor is granted on the fifth claim for relief. The remaining claims are dismissed for failure to state a claim. Plaintiff's motions are denied. This action is hereby dismissed.

DATED: 5-10-98

/s/ JEREMY FOGEL
United States District Judge

Appendix C Excerpt from a written communication from the FDA's staff Historian, John Swann, received by petitioner May 2, 1997, which describes the

documentation that the FDA "crushed" the mineral water industry.

"Cases the government pursued against assorted mineral waters are summarized in Mastin G. White and Otis H. Gates, Decisions of Courts in Cases under the Federal Food and Drugs Act (Washington, D. C.: G.P.O., 1934). For cases under the 1938 act see the multi-volume series issued by the Food [and Drug] Law Institute under the running title, Federal Food, Drug, and Cosmetic Act: Judicial and Administrative Record (Chicago: Commerce Clearing House, 1938-), and FDA, Notices of Judgment under the Food and Drugs Act, which was indexed annually. Another possible source is in the National Archives, which recently acquired a 2000 cubic foot collection of records of FDA from c. 1938 to c. 1975, most of which consists of general subject files from the agency. Very possibly documents on mineral waters are included in these papers.

The FDA and the Department of Justice do indeed "[work] in concert . . .," since the latter represents the government in legal issues.

As for the part AMA played in crushing the mineral water industry, hopefully other readers will be able to offer some suggestions.

/s/ John Swann
Historian, FDA
jswann@ora.fda.gov

Appendix D Excerpts of written communications received by petitioner from Dr. John Zwicky, Archivist of the American Medical Association's Historical Health Fraud Collection, May, 1997, describing the documentation that Government agencies destroyed the American mineral water industry:

"I am an archivist. I worked on the AMA's collection on historical health fraud and alternative medicine. I saw the records for mineral water and other waters.

The AMA archives has a fair amount of material on the mineral water industry in their historical health fraud collection. Most of the material concerns specific companies. The material (includes) notices of federal judgments against the companies. The historical health fraud collection also has some records of federal agencies such as the Federal Trade Commission, which prosecuted companies for misbranding or other offenses.

If I were in your position, I would start with the AMA and take plenty of notes, then move on to the federal agencies. Some major libraries ... may have the published notices of enforcement actions by these agencies. For other records of federal action against individual companies, you may contact the FDA to see if they have an archives or if their records are in the National Archives. Likewise with the Federal Trade Commission.

The Department of Justice is another matter.... You would need to find out which federal district court it went to and which branch of the National Archives has those court records.

/s/ Dr. John Zwicky, Archivist
American Medical Association

Appendix E Here is a 1930 example of how the new FDA and DOJ went about destroying the American mineral water industry. UNITED STATES v. NINETY-FOUR DOZEN, MORE OR LESS, HALF-GALLON BOTTLES CAPON SPRINGS WATER. The district court ruled, inter alia:

"No hearing in the nature of a rule to show cause called for by regulations was given to the claimants, but, on the contrary, they were refused all information and opportunity to correct the information upon which the libelant (FDA) had based its libel."

"We make the finding that the water at the time of trial was free from the criticisms made of it, and will continue to be free. ....The offer was made by claimants to submit the water to analysis and microscopial examination for the government. The offer was declined....

The libel should be dismissed."

(The Capon Springs Mineral Water Company was crippled by the legal expense to reach this ruling and the negative publicity of the trial. Thus the FDA did achieve its goal of destroying this mineral water company, even though FDA lost at court.)

Appendix F

Magnesium Content of Representative Bottled Waters Around the World (Appellate Excerpts of Record, p. 50).

American Bottled Waters average 2.7 mg/L magnesium content, compared to an average of 28 mg/L magnesium content in the rest of the world. These lab results were gotten from two books:

The Pocket Guide to Bottled Water, by Arthur von Wiesenberger, Contemporary Books, Chicago, 1991.

The Good Water Guide, by Maureen & Timothy Green, Rosendale Press, London, 1994.

Appendix G A Swiss database of 880 water brands from around the world showed an average Mg content of 43 mg/L. Data source:
http://www.mineralwaters.org/ By comparison, American bottled waters

average less than 3 mg/L magnesium content.

Appendix H Excerpts from the Report of the Safe Drinking Water Committee of the U.S. National Academy of Sciences, 1977 pp. 440-447 (Appellate Excerpts of Record, pp. 56-60).

"Studies in the United States and Canada have shown that age-adjusted cardiovascular mortality rates among populations using very soft water may be as much as 15-20% higher than among populations using hard water." p. 440

"In the United States, cardiovascular diseases account for more than one-half of the approximate 2 million deaths occurring each year." p. 447

"Several investigators have attributed the disease-protective effect of hard water to the presence of calcium and magnesium, which are the principal cations found in hard water." pp. 441-442

Appendix I Dietary Reference Intakes, National Institute of Medicine of the U.S. National Academy of Sciences, 1997 (Appellate Excerpts of Record, pp. 80-125)

Magnesium has been called "nature's physiological calcium channel blocker". ....A state of magnesium depletion may

result in muscle cramps, hypertension, and coronary and cerebral vasospasms. Magnesium depletion is found in a number of diseases of cardiovascular and neuromuscular function. p. 6-2

With the increased consumption of refined and/or processed foods, dietary magnesium intake in the United States appears to have decreased over the years. Water is a variable source of intake; typically, water with increased "hardness" has a higher concentration of magnesium salts. p. 6-5

Areas with increased water hardness (which is due to high calcium and magnesium content) tend to have lower cardiovascular death rates. p. 6-7

There is emerging evidence that habitually low intakes of magnesium and resulting abnormal magnesium metabolism are associated with etiologic factors in various metabolic diseases. p. 6-6

Animals on low magnesium diets develop arterial wall degeneration and calcification as well as hyper-triglyceridemia, hypercholesterolemia, and atherosclerosis. p. 6-7

Populations that have low dietary intake of magnesium have been reported to have an increased incidence of hypertension. p. 6-8

Epidemiologic studies have suggested that individuals or groups ingesting hard water that contains magnesium ... have decreased morbidity from cardiovascular disease or less hypertension. Low magnesium intake has also been linked to osteoporosis. The evidence from many studies, taken together, may lend confidence to the theory that dietary magnesium intake may indeed contribute to these disorders. p. 6-14

The RDA of Mg for men, ages 51-70 is 420 mg/day. p. 6-30
The mean daily intake of Mg for males is 323 mg/day p. 6-5

Appendix I Atherosclerosis Risk in Communities Study, Division of Epidemiology, School of Public Health, University of Minn., and Johns Hopkins Medical Institutions. An epidemiological study of how magnesium deficiency correlated with heart disease in a study group of 13,922 middle aged adults. Conclusion:

"These findings suggest that low magnesium concentration may contribute to the pathogenesis of coronary atherosclerosis or acute thrombosis. – American Heart Journal, 1998;136:480-490 District Court Administrative Record, p. 3404

Appendix K Excerpt of letter from former Surgeon General C. Everett Koop to petitioner received 7/25/94, District Court Administrative Record, p. 3155.

"I know that a good case can be made for the correlation of cardiovascular deaths with magnesium deficient water."
July 25, 1994

Appendix L Variation in the Mineral Content of Commercially Available Bottled Waters: Implications for Health and Disease. --- Dept. of Physiology, McGill University, and the Dept. of Medicine, Jewish General Hospital, Montreal, Canada.

"The ideal bottled water should be rich in magnesium and calcium." Administrative Record, p. 3406.

Appendix M In District Court in the case cited in Appendix B: SPECIAL APPEARANCE ON BEHALF OF UNITED STATES DEPARTMENT OF

JUSTICE TO OPPOSE JOINDER AS PARTY TO THE INSTANT CASE, filed Aug. 27, 1997.

"To the extent that plaintiff's claim is reviewable, it is reviewable under 28 U.S.C. §§ 1331 with the standards of the Administrative Procedure Act determining the standard and scope of review. ...the Supreme Court long ago held that an agency's decision to take civil or criminal enforcement action is "a decision *generally* committed to an agency's absolute discretion', and therefore not reviewable by federal district court."